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California State Senate

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FIFTH SENATE DISTRICT



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July 19, 2012

Hon. Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

RE: Update on Senate Bill 1495

Dear Chair Isenberg and Council Members

As the Council is aware, the two Delta ports, the Port of Stockton and the Port of West Sacramento, are extremely important to the economy of the Delta region.

Both Delta ports have expressed deep concern over the potential implications of a covered actions review for routine maintenance dredging and lease approvals. While these two actions are very unlikely to have a significant impact on the Delta, a potential challenge triggering a covered actions review would threaten the ability of the ports to conduct business. If held up by a covered actions review, the time period allowed under existing biological opinions for dredging could be easily missed for an entire year.

SB 1495 is designed to narrowly exclude these two activities, thereby eliminating the risk of costly time delays.

My staff met with Delta Stewardship Council staff soon after the bill was introduced in January. At that time, Council staff indicated concern that the bill language would result in broad exemptions from covered actions.

Since that meeting, I amended the bill to significantly limit the scope of the proposed exemptions. In addition to meeting with your staff, I have worked closely with stakeholders who raised similar concerns including Metropolitan Water District, Westlands Water District, and ACWA. I have reached agreement with them on amendments that will allow these stakeholders to remove opposition to SB 1495. I have attached the amendments in mock-up form dated July 16, 2012 and plan to amend the bill in early August when it is heard in Assembly Appropriations committee.

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Note that the new language limits routine maintenance dredging to specific river miles within the ship channels of the two ports. With these amendments, SB 1495 will be more restrictive than language included in the Final Staff Draft of the Delta Plan dated May 14, 2012.

SB 1495 provides much needed certainty to the ports of the Delta without posing any risk to the implementation of the Delta Plan.

If the Council has any concerns with SB 1495 as proposed to be amended, I welcome the opportunity to discuss those concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Lois Wolk", with a stylized flourish at the end.

LOIS WOLK
Senator, 5th District

cc:

Joe Grindstaff
Chris Stevens

ATTACHMENTS

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Amendments Mock-up SB-1495 (Wolk (S))

*******Proposed Amendments are in *italics********

Mock-up based on changes to existing law

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 85057.5 of the Water Code is amended to read:

85057.5. (a) "Covered action" means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.
- (2) Will be carried out, approved, or funded by the state or a local public agency.
- (3) Is covered by one or more provisions of the Delta Plan.
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(b) "Covered action" does not include any of the following:

- (1) A regulatory action of a state agency.
- (2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.
- (3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.
- (4) Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

(5) Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

(6) Any plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:

(A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.

(B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.

(7) (A) Any project within the secondary zone, as defined pursuant to Section 29731 of the Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.

(B) Any project for which a notice of approval or determination is filed on or after the date on which the final Bay Delta Conservation Plan becomes effective, and before the date on which the Delta Plan becomes effective, is not a covered action but shall be consistent with the Bay Delta Conservation Plan.

(C) Subparagraphs (A) and (B) do not apply to either of the following:

(i) Any project that is within a Restoration Opportunity Area as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of the Bay Delta Conservation Plan, August 3, 2009, or as shown in a final Bay Delta Conservation Plan.

(ii) Any project that is within the alignment of a conveyance facility as shown in Figures 1 to 5, inclusive, of the Final Draft Initial Assessment of Dual Delta Water Conveyance Report, April 23, 2008, and in future revisions of this document by the department.

(8) Leases approved by a special district formed under the Harbors and Navigation Code if all of the following apply:

(A) The uses proposed by the lease are authorized by the applicable general plan and zoning ordinances of the city where the special district is located.

(B) The uses proposed by the lease are approved by the city where the special district is located and the city complies with Chapter 3 (commencing with Section 85225) of Part 3, if applicable, prior to approval of the lease by the special district.

(C) The special district complies with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to approving the lease.

(9) (A) Routine dredging activities that are necessary for maintenance of facilities operated by special districts formed under the Harbors and Navigation Code.

(B) For purposes of this paragraph, "routine dredging activities," are limited to the following:

(1) Dredging to maintain the Stockton Deep Water Shipping Channel at a depth of 40 feet in the sediment trap at the confluence of the San Joaquin River, between river mile (RM) 39.3 to RM 40.2, and to maintain the remaining Stockton Deep Water Ship Channel at a depth of 35 feet plus two feet of overdredge.

(2) Dredging designed to maintain the Sacramento Deep Water Shipping Channel at a depth of 30 feet plus two feet of overdredge from river mile ("RM") 0.0 to RM 30, and at a depth of 35 feet from RM 35 to RM 43.

(c) Nothing in the application of this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.